IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/10/2004

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE Mr. JUSTICE S.R.SINGHARAVELU

Original Side Appeal No.172 of 2000
and
C.M.P.No.9487 of 2000
and
C.M.P.No.18256 of 2000

Union of India
rep. by the Chief Engineer,
MES, Madras Zone, Island Grounds,
Chennai - 9.
.... Appellant

-Vs-

1. M/s. G.Ramachandra Reddy & Co.,
Hyderabad.

2. Justice MA Sattar Sayeed (Retd)
Arbitrator, F-55, 4th Street,
Anna Nagar East, Chennai - 600 102.
.... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of O.S.
Rules read with the Clause 15 of Letter Patent and Section 39 of the Indian
Arbitration Act against the judgment and decree dated 14.01.2000 made in
O.P.No.294 of 1997.

!For Appellant : Mr. C.Krishnan, SCGSC for
Mr. M.T. Arunan, ACGSC

^For Respondents: Mr. Muralidharan for
Mr. R.Murari - R1

:J U D G M E N T

(Judgment of the Court was delivered by S.R.SINGHARAVELU,J)

The above appeal is directed against the decree and judgment dated 1

4.1.2000 made in O.P.No.294 of 1997 confirming the award passed by the arbitrator for the claims made by the first respondent/ contractor against the appellant.

2.1. In brief, the first respondent/contractor has entered into a contract with the appellant/Government for construction of Married Accommodation for MCPOs/CPOs/POs and Junior Sailors at Naval Air Station, Arakonam for a sum of Rs.7,54,03,216/-. A t ender notice was issued on 05.05.1988 inviting tenders for provision of Married Accommodation for MCPOs/CPOs/Pos and Junior Sailors at Arakonam, pursuant to which the first respondent/contractor offered his tender to complete the construction for a sum of Rs.7,67,94,728/-. However, by a letter dated 9/17.7.1988, which was marked as Ex.C.2, he offered to confirm that when his tender was opened and rates read out, to please read out (+)/(-) 2.25% under item 1 of the Schedule quoted percentage and also claimed 40% towards the labour component. On receipt of such letter, the appellant, by their letter dated 19th July 1988, informed the first respondent that the labour component would be awarded only at 2 1 % as per condition 17 of the Special Conditions applicable to the case of the construction of Married accommodation. In consideration of the request made by the contractor to read the schedule quotation as -2.25%, the tender offered by the first respondent/contractor was considered with the reductio n of 2.25% in the quoted percentage. Another letter was written by the first respondent on 05.08.1988, which was marked as Ex.C.4 admitting all claims that he had made in his letter dated 9/17.7.1988 , marked as Ex.C.2 and to read the quotation with +2.2 5%. When the contract was ultimately awarded, by the appellant on 11.08.1988, (Ex.C.5), reading the quotation offered by the contractor as 7,54,03,216/- instead of Rs.7,67,94,728/- by reducing 2.25%, the same was accepted and got concluded.

2.2. Similarly, in the letter dated 9/17.7.1988, Ex.C.2, he claimed 40% of the labour charges.

2.3. That apart since the construction is a high rise building consisting of 6 floors, the first respondent/contractor wanted to raise a claim for escalation of the labour for the high rise building based on the Notification applicable for the high ris e building, which reads as follows:

"Workers employed on high rise buildings over 30 feet in height or four floors in the construction industry shall be paid 20% extra wages of the minimum wages fixed under this notification for the appropriate category."

2.4. Since there was a delay in handing over the site and supply of materials, the contractor also claimed for loss of profit, apart from two other claims, namely, dispute regarding release of the plaintiff plant and equipment, together with damages f or the use of the equipment by the dependant and in the default payment of the market value of the plant and equipment as on the date of termination together with the damages as aforesaid and disputes regarding balance payment for the work done, with res pect to which the Government did not raise any objection.

2.5. Hence, the arbitration with respect to the four contesting claims referred to above.

3.1. The arbitrator came to the conclusion that the letter dated 9/17.7.1988 (Ex.C.2) does not make out whether the contractor intended to quote the price with +2.25% or -2.25% and therefore construed that he intended to recoup in the quotation with ad dition of 2.25 % instead of reduction of 2.25%. The same view was also confirmed by the learned single Judge in the Original Petition preferred by the Department.

3.2. With regard to the second claim, which is again based on Ex. C.2 dated 9/17.7.1988, the arbitrator gave benefit of 40% for the labour charges and not taken cognizance of Ex.C.3 at all, which in turn confirmed by the learned single Judge.

3.3. With regard to the claim No.3, 20% of the escalation of the labour charges, both the Arbitrator and the learned single Judge rejected the case of the appellant that 5th and 6th floors alone should be taken into consideration for awarding escalatio n of labour charges at 20%.

3.4. With regard to the fourth claim, loss of profit, the arbitrator taking note of the fact that there was a delay in handing over the site and supply of materials, awarded 15% and the same was confirmed by the learned single Judge.

4. Aggrieved by the award of the Arbitrator, as confirmed by the learned single Judge, with regard to the four claims referred to above the Department has preferred the above appeal.

5.1. Mr. C.Krishnan, learned senior counsel appearing for the appellant reiterated the submissions made before the learned arbitrator as well as before the learned single Judge inviting our attention to Exs. C.2 to C.5 as well as Clause 17 of the tende r condition and additional special conditions of the tender.

5.2. According to Mr.C.Krishnan, learned counsel for the appellant, the letter dated 11.8.1988 (Ex.C.5) makes it clear that the contractor intended only to reduce 2.25% from his original quotation, namely, Rs.7,67,94,728/-, for having accepted the awar d under the contract at the rate of 7,54,03,216/-, which also got concluded ultimately. He also invited our attention to Clause 17 of the tender conditions and Clause 13 of the Special Conditions, which provides only 20% of the escalation in labour char ges. According to Mr.C.Krishnan, the first respondent/contractor is entitled for escalation of labour charges only with respect to the 5 th and 6th floors, which alone are considered as high rise building and not for all the six floors of the building. He further submitted that even though there is a delay in handing over the site and in supplying the materials, the contractor is not entitled for the relief sought for before the arbitrator.

6.1. Per contra, Mr. Muralidharan, learned counsel appearing for the first respondent/contractor contends that the amount awarded is sustainable in law, as the arbitrator has awarded the amount only after duly apprising Exs.C.2 to C.5 and that the con tractor is entitled to escalation of labour charges at 20% in respect of high rise buildings in view of the notification, which reads as follows:
"Workers employed on high rise buildings over 30 feet in height or four floors in the construction industry shall be paid 20% extra wages of the minimum wages fixed under this notification for the appropriate category."

6.2. He also submitted that the award on loss of profit to the tune of Rs.23 lakhs for delay in handing over the site is sustainable in law in view of the admitted facts.

7. We have given careful consideration to the submissions of both sides.

8. Admittedly, there is no cross appeal with regard to any of the claims 1 to 4.

9.1. It is true that unless the reasons are erroneous as such as propositions of law or a view which the arbitrator has taken is a view which could not be sustained on any view of the matter, the challenge to the award of the arbitrator cannot be susta ined. But where the arbitrator has committed any error apparent on the face of records, the award is liable to be set aside if the reasons are totally erroneous and contrary to the materials available before the Court as held by the Apex Court in F.C.I. V. Joginderpal Mohinder pal reported in (1989) 2 SCC 347.

9.2. Similarly, in State of Rajasthan V. Puri Construction Co. Ltd. reported in (1994) 6 SCC 485 it is held that Courts can interfere if the error is demonstrable on the face of the material on record which amounts to legal misconduct and such misconduc t requires to be interfered, but the interference is necessary when the arbitrator does not perpetrate gross miscarriage of justice and the arbitration is not reduced to mockery of a fair decision of the lis between the parties to arbitration. If there is an error apparent on the face of the record of having misread or misconstrued by the arbitrator in rendering the award, it would only render the alternative dispute resolution system a mockery in justice rendering system.

9.3. It is settled law that the Courts of law have a duty and obligation in order to maintain purity of standards and preserve full faith and credit as well as to inspire confidence in alternate dispute redressal method like arbitration. In any event, the arbitraralily and irrationlity on a perverse understanding or misreading of the materials placed before the arbitrator, would render the award to be a one in utter disregard of law and the precedents vide Sikkim Subba Associates V. State of Sikkim r eported in (2001) 5 SCC 629.

10. In the instant case, on a perusal of the relevant materials placed before us, it is apparent on the face of the record, even though there is a trifling as to whether the contractor intended to add or reduce 2.25% to his quotation as his final offer in his letter dated 9/17.7.88(Ex.C.2), we do not find any difficulty to arrive at the conclusion as it is apparent on the face of record that the contractor intended only to reduce 2.25%, which is seen from Ex.C.5, which is final and concluded. Hence, the claim No.1 awarded by the Arbitrator as well as learned single Judge is contrary to the materials available on record. Accordingly, Claim No.1 fails.

11. Even though, the first respondent/contractor made a claim of 40 % of escalation towards labour charges in his letter dated 9/17.7.198 8 (Ex.C.2), the same was refused by the appellant in their letter dated 19.7.1988 (Ex.C.3) and in any event as per C lause 13 of the Special Conditions, the contractor is not entitled 20 % of the contract. However, in the instant case, the Department themselves gave 21% to the contractor and only 21% of escalation, which is in consonance with the special conditions, wh ich is also apparent on the face of the record. Therefore the second claim of escalation towards labour charges at 40%, which was awarded by the Arbitrator and confirmed by the learned single Judge, is liable to be set aside and accordingly the same is set aside.

12.1. We propose to refer the Government Notification as to the additional labour charges for high rise building
"Workers employed on high rise buildings over 30 feet in height or four floors in the construction industry shall be paid 20% extra wages of the minimum wages fixed under this notification for the appropriate category."

12.2. A reading of the above condition makes it clear that buildings over and above 30 feet in height or four floors alone be considered as high rise building and the workers employed for the same are entitled for additional 20% of their minimum wage. Hence, the contractor is entitled for additional 20% of the minimum wage with regard to the workers employed in 5th and 6th floors and not for the entire building. Therefore, the award with regard to the third claim passed by the Arbitrator and confirm ed by the learned single Judge stands modified to the above effect.

13. However, we find some substance with regard to the claim No.4, loss of profit, there was an admitted delay in handing over the site and supply of materials. We confirm both the award of the Arbitrator and the order of the learned single Judge with regard to Claim No.4, loss of profit.

14. Even though an attempt was made to seek clarification with regard to rate of interest at 18%, for which period he is entitled to, it is suffice to clarify that they are entitled at 18% simple interest from the date payable to the claimant with regar d to claim No.4, till the date of realisation.

15. Mr. C.Krishnan, learned senior counsel also brought to our notice that pending appeal a sum of Rs.80,00,000/- was paid to the first

respondent and a sum of Rs.60,00,000/- has been deposited in the Indian Bank by an order dated 07.12.2000 made in C. M.P.No.18256 of 2000.

16. In view of the above reasons suffice it to direct both the appellant and the first respondent to settle their accounts only with regard to Claim No.4 and part of Claim No.3 as held above, which shall carry interest at the rate of 18% simple interes t from the date payable to the claimant till the date of realisation.

17. The above Original Side appeal is partly allowed in the above terms. No costs. Consequently, C.M.P.Nos.9487 and 18256 of 2000 are closed.

Index :Yes
Internet:Yes
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To

The Registrar,
Original Side, High Court,
Madras.

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